IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 6405 OF 2006

Dattatraya Haribhau Lohar ... Petitioner
(orig. Plaintiff)

Versus

The State of Maharashtra & Ors. ... Respondents
(Orig. Defendants)

Mr. Dilip Bodake, Advocate, for the petitioner.
Mr. Sagar Kasar, Advocate, i/b. S.K.Shinde, Advocate for the Respondent No.6.
Mr. R.M. Patne, AGP, for Respondent Nos.1 to 4.

CORAM: J.H.BHATIA,J.

DATE : 14th September, 2007.

P.C.

1. Heard learned Counsel for the parties.

2. The petitioner who is the original plaintiff, is the grandson of one Rama. Rama was a tenant of certain property of the landlord. It appears that in 1961, Rama did not purchase the property under Section 32-G of the

Bombay Tenancy and Agricultural Lands Act, 1948. The landlord - respondent No.6 initiated proceedings for possession of that land against respondents Nos. 7 to 9 who are also grandsons of Rama. The present petitioner was not made a party to that proceeding. The present petitioner moved an application before the Tahsildar to implead him as a party, but that application was rejected. Thereafter, the petitioner could not participate in the proceedings. However, the Tahsildar also rejected the proceedings filed by respondent No.6 for possession. Against that order, respondent No.6 filed an appeal before the S.D.O. The appeal was allowed and the S.D.O. directed to put respondent No.6 in possession of the property. Against that order, respondent Nos. 7 to 9 have preferred a revision which is pending before the Commissioner. The present petitioner filed a suit for the same property and sought temporary injunction restraining the respondent No.6 from taking possession of the property. The trial Court rejected that application. The appeal was also dismissed on the ground that suit is not maintainable.

3. It appears that when the application of the present petitioner was rejected by the Tahsildar for impleading him as a party, he should have taken appropriate proceedings against that order for getting himself impleaded as a party which he did not do and

adopted the wrong proceeding by filing a civil suit. The fact remains that his valuable rights over the property are likely to be affected by the proceedings before the Revenue Authorities and that too without making him a party.

4. At this stage, the learned Counsel for the petitioner seeks to withdraw this petition as well as the suit with liberty to appear before the Commissioner so that he may participate in the revision before the Commissioner and he may also make a request to the Commissioner to remand the matter back to the S.D.O. In my opinion, the following order would meet the ends of justice :-

(i) The petitioner is allowed to withdraw this petition as well as the suit before the trial Court. However, he is given liberty to appear before the Commissioner in proceedings arising out of Tenancy Case No.4/2004. If he moves such an application before the Commissioner within four weeks from today, the Commissioner shall allow him to be impleaded as a party in the said revision and if he moves an application for remand of the matter to the S.D.O., that application will also be

considered by the Commissioner on its own merits.

(ii) Till the decision by the Commissioner, the status quo order passed by this Court shall continue.

(iii) All contentions of the parties are kept open.

5. The learned Counsel for the respondent No.6 makes a statement that respondent No.6 shall not take any objection for impleading the petitioner as a party.

(J.H.BHATIA,J.)